RUBBER manufacturers association

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August 26, 2002

The Hon. Jeffrey W. Runge, M.D.
Administrator
National Highway Traffic
Safety Administration
U.S. Department of Transportation
400 Seventh Street, S.W.
Washington, D.C. 20590

Re: Supplemental Notice of Proposed Rulemaking – Disposition of Recalled Tires; Docket No. NHTSA-2001-10856; Notice 2; 67 *Federal Register* 48852-48855 (July 26, 2002).

Dear Dr. Runge:

On behalf of its tire manufacturer members, the Rubber Manufacturers Association ("RMA") [1] hereby responds to the above-captioned supplemental notice of proposed rulemaking ("SNPRM") regarding the disposition of defective or non-compliant tires that are subject to recall. The notice "seeks comments on RMA's general approach [to the disposition of recalled tires], on whether RMA's proposal is consistent with statutory requirements, and on RMA's proposed regulatory text." 67 Fed. Reg. at 48852, col. 1. We explain below why RMA's proposed approach to the disposition of recalled tires is fully consistent with Section 7 of the Transportation Recall Enhancement, Accountability, and Documentation ("TREAD") Act, respond to the specific issues addressed in the SNPRM, and provide further support for our previous recommendations to the agency on this important issue.[2]

I. RMA's Proposed Approach to the Disposition of Recalled Tires is Fully Consistent with Section 7 of the TREAD Act.

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[1] The Rubber Manufacturers Association ("RMA") is the leading national trade association representing the interests of tire and rubber manufacturers in the United States. RMA's membership includes all of the country's major tire manufacturers: Bridgestone/Firestone Americas Holding, L.L.C., Continental Tire N.A., Inc., Cooper Tire & Rubber Company, The Goodyear Tire & Rubber Company, Michelin North America, Inc., Pirelli Tire North America, and Yokohama Tire Corporation.

[2] Because the SNPRM is limited to issues presented by RMA's position in this rulemaking, we believe it is appropriate to permit RMA to respond to comments filed by other parties that may present a contrary position. We therefore respectfully request the opportunity to file supplemental comments in this matter no later than September 26, 2002.

Section 7 of the TREAD Act imposes specific requirements on the elements that a tire manufacturer must include in a remedy program involving the replacement of recalled tires. Breaking the text of Section 7 into its separate statutory mandates, these elements include:

- "a plan addressing":
  - "how to prevent, to the extent reasonably within the control of the manufacturer, replaced tires from being resold for installation on a motor vehicle" and
  - "how to limit, to the extent reasonably within the control of the manufacturer, the disposal of replaced tires in landfills, particularly through shredding, crumbling, recycling, recovery, and other alternative beneficial non-vehicular uses;" and
- "information about the implementation of such plan with each quarterly report to the Secretary regarding the progress of any notification or remedy campaigns."

A. Section 7 Permits the Flexible Approach Recommended by RMA.

With respect to the "plan" required in Section 7, RMA opposes the one-size-fits-all approach proposed in the NPRM and has instead urged NHTSA to allow a tire manufacturer to work with the Agency to develop a recall plan that is carefully tailored to the specific circumstances of each recall. This flexible approach is fully consistent with the language in Section 7 that requires the *manufacturer* – not NHTSA – to develop "a plan" that addresses (1) how to prevent recalled tires from being resold for installation on a motor vehicle and (2) how to limit the disposal of recalled tires in landfills. Because Congress did not require NHTSA to conduct a rulemaking to implement this provision of the TREAD Act, RMA believes that Section 7 on its face gives tire manufacturers the flexibility to develop recall plans that address these specific issues on a case-by-case basis.

RMA, has, moreover, recommended an approach to NHTSA that is not only fully consistent with the TREAD Act, but is also consistent with the available data on tire recalls in the United States. As we explained in our initial comments,[3] there have been a total of approximately 295 tire recalls in the U.S, the vast majority of which involved a small quantity of tires: four recalls, including the 2000 Firestone recall, involved more than 1 million tires; 51 recalls involved more than 10,000 tires; and 142 recalls involved less than 1,000 tires.

[3] Docket No. NHTSA-2001-10856-4, filed February 19, 2002 ("RMA Initial Comments").

Based on this data, and in order to ensure that tire manufacturers are not subjected to burdensome paperwork requirements for recalls involving only a small number of tires, RMA has recommended that the final rules issued in this proceeding apply only to recalls involving 10,000 or more tires. The 10,000-tire threshold also ensures that the new regulatory requirements adopted in this proceeding apply even to tire recalls that involve substantially fewer tires than those involved in the 2000 Firestone recall.

For recalls involving fewer than 10,000 tires, RMA believes that the current regulatory requirements contained in 49 CFR Part 573 satisfy Section 7 of the TREAD Act. RMA believes this approach makes sense because when a recall involves a relatively small number of tires, it is possible to trace the shipments of the affected tires to specific tire dealers or other retailers. In such situations, it would be extremely burdensome and unnecessary to comply with other paperwork and notification requirements that do not improve motor vehicle safety.

B. RMA's Proposed Approach Contains the Elements Required in Section 7.

As we explained in our initial comments, RMA supports the inclusion of the following elements in a manufacturer's remedy plan for recalls involving 10,000 or more tires:

1. How the manufacturer will assure that the entities replacing the tires are aware of the legal requirements related to recalls of tires.

2. How the manufacturer will prevent, to the extent reasonably within its control, the recalled tires from being resold for installation on a motor vehicle.

3. How the manufacturer will limit, to the extent reasonably within its control, the disposal of the recalled tires in landfills.

Even though the first element is not expressly required under the TREAD Act, RMA supports its inclusion in tire recall plans involving 10,000 or more tires because it is sound public policy to do so. By informing tire dealers and others of the adverse legal consequences that accompany the re-sale of recalled tires, this element will also help to ensure that the recalled tires are promptly returned to the tire manufacturer and removed from the dealer's inventory, as recommended in RMA's earlier comments.

RMA cannot overstate its position that the current system for handling recalled tires works as long as tire manufacturers are allowed to control the recall process. When third parties intervene, the controls are lost and problems are created. When tire manufacturers require the return of recalled tires in order for the dealer to receive credit, this is the best control for removing tires from the marketplace and the highways and ensuring that they are not resold to consumers.

Thus, RMA's proposal also provides sufficient "mechanisms for assuring the security of recalled tires prior to shipment to the manufacturer, so that those tires do not enter the marketplace inadvertently." 67 *Fed. Reg.* at 48853, col. 1.

Elements 2 and 3, of course, track the specific language used in Section 7 and are therefore consistent with the statutory mandate. (The third element is discussed in greater detail below, in Section I.C.) Finally, even though Section 7 does not specify a role for NHTSA, RMA also supports the requirement that each plan must be presented to the Agency prior to its implementation. RMA's proposed approach to the disposition of recalled tires is therefore fully consistent with Section 7, clearly effectuates the purpose of the TREAD Act, and should be adopted in this rulemaking.

C. RMA's Proposal Satisfies Section 7's Concern with the Environmental Impacts of Recalled Tires.

As a leading force in the development and implementation of a sound national scrap tire policy, RMA shares Congress' and NHTSA's concerns regarding the environmental impacts of disposed tires. Scrap tires are used in a number of market applications. RMA data show that in 2001, markets for scrap tires consumed 218 million, or about 77.6 percent, of the approximately 281 million scrap tires that were generated. Specifically, 115 million tires were consumed as fuel, 40 million reached civil engineering applications, 41 million were used in new products and 22 million tires went to other market applications. RMA is finalizing a biannual report on scrap tire markets and will submit it to this docket upon its completion.

We have incorporated our knowledge and experience with this issue in our proposed approach to the mandate in Section 7 regarding the "disposal" of tires in landfills. In our initial comments, we explained that Section 7 does not prohibit the landfilling of scrap tires, but pointed out that there are beneficial uses of scrap tires in landfilling operations. See RMA Initial Comments at pp. 3-4.

Indeed, according to recent research conducted by RMA, there has been dynamic growth over the past two years in the use of scrap tires in the construction and operation of a landfill. Scrap tire shreds can economically replace other, more expensive materials used to construct and reinforce landfills. Tire shreds are also being used in increasing numbers, primarily in leachate collection systems and as an alternative daily cover. Other civil engineering applications in landfill construction that are using tire shreds include lightweight backfill in gas venting systems, operational liners and as part of a cap closure system. These beneficial uses of scrap tires in landfills are clearly not contrary to Section 7's mandate regarding the "disposal" of recalled tires.

Due to RMA's historical leadership and the knowledge of the tire industry

in the area of scrap tire management, we believe that RMA tire member companies are uniquely situated to ensure the proper disposition of recalled tires through beneficial scrap tire markets. By allowing the return of recalled tires to the tire manufacturer, scrap tire disposition can be coordinated by a single entity, rather than potentially by thousands of tire dealers across the country. This system would not only be consistent with Section 7 of the TREAD Act, but it would provide greater consistency with it than NHTSA's original proposal.

Finally, we note that, to date, there have been no comments filed in response to the NPRM that challenge RMA's leadership on the issue of scrap tire management or oppose this aspect of RMA's proposal. RMA's proposed approach ensures that recalled tires are properly disposed of in accordance with state scrap tire laws and sound scrap tire policy. RMA's proposal regarding the disposition of recalled tires therefore satisfies this element of Section 7 of the TREAD Act.

II. RMA's Proposed Approach is Consistent With 49 U.S.C. 30120(i) and (j).

In the supplemental NPRM, NHTSA specifically requests "comments on the issue of whether RMA's proposed alternative is consistent with 49 U.S.C. 30120(i) and (j), which by their terms preclude the sale of recalled tires that have not been remedied." In raising this issue, NHTSA has apparently misinterpreted RMA's proposal. We are not advocating the sale of "recalled tires," but only those tires that do not, in fact, contain the defect or non-compliance that is the subject of the recall notification or order. Indeed, Section 3(c) of the TREAD Act expressly prohibits the sale or lease of defective or non-compliant tires. *See* 49 USC §30166(n)(1).

As we explained in our supplemental comments,[4] the most effective way of controlling recalled tires is to require their return to the tire manufacturer in order for the dealer to receive credit for the recalled tire. If the dealer has replaced a recalled tire(s) for a consumer, he or she will want to not only receive credit for the tire, but also an allowance for handling, mounting and balancing of the tire(s) replacing the recalled tire(s). Through this incentive-based-mechanism, the manufacturer is then in a position to properly dispose of the recalled tires.

RMA's proposal to allow a tire manufacturer to require the return of all "recalled tires" to the manufacturer is not only preferable from a security standpoint, it is also entirely consistent with NHTSA's current regulations governing defect and noncompliance reports under 49 CFR Part 573. These regulations contemplate that some of the tires deemed to be "recalled tires" do not, in fact, contain the specified defect or non-compliance, and should therefore be excluded from the recall population. *See* 49 CFR §573.5(c)(2)

[4] Docket No. NHTSA-2001-10856-9 (filed May 9, 2002) ("RMA Supplemental Comments").

and (4).

RMA's approach to this issue also reflects the manner in which tires are manufactured and labeled under existing NHTSA regulations. The tire identification number ("TIN") establishes the manufacturing plant and the lot number to which a specific tire belongs. Tires within a given lot number may be manufactured from a variety of different "batches" of raw material and different equipment such as extruders, building machines and curing presses. In some instances, there may be a problem with one particular "batch of raw materials" or piece of equipment and only the tires coming out of that "batch of raw materials" or off of that piece of equipment have a safety-related defect or non-compliance. For example, a tire manufacturer recently undertook a voluntary recall because a drill bit broke off in a mold and it placed a small hole in a limited number of tires. However, in order to identify these tires, it was necessary to recall all of the tires with the identical DOT identification number or same lot of tires. To destroy those tires which were cured in other molds without the safety-related defect would be wasteful, generate needless scrap tires and increase the price of tires for the consumer.

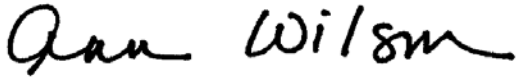
Improper labeling itself can also give rise to a safety-related defect. For example, if a load range C light truck tire was mislabeled as a load range D, this tire could be overloaded in service resulting in a potential tire failure. However, this tire could be recalled and properly relabeled as a load range C tire and be in compliance with all applicable FMVSS regulations. In such a case, for all the reasons we have already stated, a tire manufacturer should be permitted to recall and remedy, if appropriate. NHTSA is therefore correct that there are few occasions with respect to a tire when a defect or non-compliance can be remedied. However, it can occur and the area in which it typically would occur is in the mislabeling of a tire.

RMA's proposed approach to the disposition of recalled tires is therefore consistent with 49 U.S.C. §30120(i) and (j), and should be adopted in its entirety.

III. CONCLUSION

For all of the reasons discussed above, and as further explained in RMA's Initial and Supplemental Comments in this matter, NHTSA should incorporate RMA's recommendations into the Agency's final regulations governing the disposition of recalled tires.

Sincerely,



Ann Wilson
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